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C O N F I D E N T I A L SECTION 01 OF 04 MADRID 000066

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TAGS: [PREL](#) [MARR](#) [SP](#)
SUBJECT: SPANISH PROPOSAL FOR NCIS/OSI AGREEMENT

REF: 06 MADRID 3048

Classified By: Ambassador Eduardo Aguirre for reasons 1.4 (b) & (d).

¶1. (C/NF) As previewed in reftel, MOD has proposed a radically shorter, less detailed draft agreement that would govern the actions in Spain of the Naval Criminal Investigative Service (NCIS) and USAF Office of Special Investigations (OSI). Although only OSD can fully evaluate the text that MOD transmitted on January 11 via the Permanent Committee (PC - the bilateral administrative body that implements the US-Spain Agreement on Defense Cooperation) and the Spanish proposal maintains its position regarding ultimate authority over the activities of the NCIS/OSI activities, it appears that the GOS has made several important concessions, including withdrawing its proposed "shadow agent" requirement that Spanish naval security personnel accompany NCIS and OSI agents during all their activities.

¶2. (C/NF) Embassy believes the appointment of Admiral Francisco Hernandez as President of the Spanish side of the US-Spain Permanent Committee that oversees base issues in Spain, and Ambassador Mora-Figueroa as the new Vice President (who is always an MFA appointee), showed GOS desire to improve the atmosphere on this issue. Hernandez and Mora-Figueroa appear to have developed and pressed for the new, shorter version as a means to show good faith and try to find less complex language that would account for Spain's public opinion concerns and the USG's force protection and operational/oversight concerns. In addition, the accompanying transmittal memo showed a desire to reach an agreement rapidly, by proposing a negotiating session in Madrid as soon as possible, agreeing to carry out further negotiations in English, and setting a negotiating team made up of people with significant and favorable experience working with the US. The Spanish team would be Vice Admiral Enrique Perez Ramirez, deputy director general for defense policy, Rear Admiral Hernandez, and Mora-Figueroa. The Spanish team ultimately would report to MOD SYG for Political Affairs Francisco Torrente.

¶3. (C/NF) The following text includes the Spanish proposal as delivered in both English and Spanish, the transmittal memo in Spanish, and an informal translation into English of the transmittal memo. Begin text.

-- TRANSMITTAL MEMO (informal translation) --

TO: President of the US Section of the US-Spain Permanent Committee

As a result of the discussions in the latest meeting between the US Defense Secretary and the Spanish Defense Minister, we propose convening a meeting in the Permanent Committee's

headquarters to reach agreement on the activities of NCIS/OSI in Spain. This section welcomes receiving proposed dates as soon as possible, estimating that the meeting will last at least two days.

To start the negotiations, the MOU is submitted as an attachment. It will be discussed point by point in English, and therefore this section will deliver an official English version in the next few days.

As SecDef suggested during the recent meeting, the negotiators on the Spanish side would be Vice Admiral Perez Ramirez, Deputy DG for Plans and Int'l Relations of the Directorate of Defense Policy, Rear Admiral Hernandez Moreno, president of the Spanish section of the PC, and Minister Plenipotentiary Mora Figueroa, vice president of the Spanish section of the PC.

At the end of the negotiations, a meeting with the Secretary General for Defense Policy, Admiral General Torrente Sanchez will be held to present final conclusions.

/s/

Rear Admiral President Francisco Hernandez Moreno

-- TRANSMITTAL MEMO (original Spanish) --

Destinatario: Sr. Cor. Presidente de la Seccion Norteamericana del Comité Permanente Hispano-Norteamericano

En consecuencia de lo hablado en el ultimo encuentro entre el Secretario de Defensa de los EEUU y el Ministro de Defensa de

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Espana se propone convocar una reunion en el seno de este Comité para llegar a un acuerdo sobre las actividades de los

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NCIS/AFOSI en Espana. Esta seccion esta abierta a recibir propuesta de fechas, lo antes posible, estimando su duracion de al menos dos dias.

Para el inicio de las negociaciones se remite el MOU de anexo, que seria tratado punto por punto en lengua inglesa, para ello esta seccion remitira en los proximos dias una version oficial en ingles.

Igualmente, como propuso el Secretario de Defensa en el mencionado encuentro, por parte espanola los interlocutores serian el Vicealmirante Perez Ramirez, Subdirector de Planes y Relaciones Internacionales de la Direccion General de Politica de Defensa, el Contralmirante Fernandez Moreno, Presidente de la Seccion Espanola del Comité, y el Ministro Plenipotenciario de Primera, Sr. Mora Figueroa, Marques de Tamaron, Vicepresidente de esta Seccion.

Al finalizar las negociaciones se tiene previsto un encuentro con el Secretario General de Politica de Defensa, Almirante General Torrente Sanchez para presentar las conclusiones finales.

/s/

Contralmirante Presidente Francisco Hernandez Moreno

-- SPANISH DRAFT MOU (official translation received from Spanish MOD) --

Article 17.6 of the Agreement on Defense Cooperation between the United States of America and the Kingdom of Spain of December 1, 1988, revised by the Protocol of Amendment April 10, 2002, envisages that the U.S. Naval Criminal Investigative Service (NCIS) and the U.S. Air Force Office of Special Investigations (AFOSI) may maintain personnel in Spain to act jointly with their counterparts of the Spanish State Security and Intelligence Services on matters of mutual interest, and to conduct criminal investigations involving

U.S. personnel or property. It also establishes that the competent Authorities of both countries shall establish regulations for such activities.

Therefore, both parties agree on the following Regulations:

MEMORANDUM OF UNDERSTANDING REGULATING U.S. ACTIVITIES IN SPAIN OF THE U.S. NAVAL CRIMINAL INVESTIGATIVE SERVICE (NCIS) AND THE U.S. AIR FORCE OFFICE OF SPECIAL INVESTIGATIONS (AFOSI).

In accordance with article 17.6 of the Agreement on Defense Cooperation between the United States of America and the Kingdom of Spain, the NCIS and AFOSI will act in Spain according to the following Rules:

- The U.S. Section of the Permanent Committee (PCUSS) should request the Spanish Section (PCSPS) - at least 7 working days in advance - the identification of those NCIS and AFOSI members, that both permanently or temporarily may carry out or plan to carry out activities in Spain. These personnel will not be able to carry out any activities without the required identification granted by the PCSPS.

- While conducting their activities in Spanish territory, NCIS and AFOSI personnel should previously show their identification either to the Spanish Authority which they are working with or to its agents.

- The activities in Spanish territory of NCIS and AFOSI personnel will be carried out jointly with Spanish agents, unless the relevant Spanish Authority specifically waves its right to do so. The PCSPS will be responsible for the control of NCIS and AFOSI personnel and will be in charge of their coordination with the Spanish Authorities, Public Organizations, or Registries, through the relevant points of contact. It could also take the necessary steps in order to obtain the information requested by the PCUSS from the above-mentioned bodies.

- Prior to starting any specific activity, NCIS and AFOSI personnel will request authorization from the Spanish Section of the Permanent Committee, through the U.S. Section, who will inform of its decision. Such activity should be limited and restricted to the authorization granted.

- In order to carry out the criminal investigations foreseen in the Agreement, and that are to be conducted jointly with the State Security Forces, NCIS and AFOSI personnel should require authorization from the Spanish Section, through the U.S. Section, informing of the nature of the facts they

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intend to clarify, the people involved and possible places of action.

- If as a result of such criminal investigations there are proved evidences that a crime has been committed, the Spanish authorities acting jointly with NCIS and AFOSI personnel will inform the Spanish Judicial Authority. U.S. investigators should also inform PCSPS through PCUSS and then wait for directions to continue with their investigations. According to article 39 of the Agreement on Defense Cooperation, the PCSPS may waive its right of jurisdiction.

- Every three months, and whenever required, PCUSS will forward to the PCSPS a report outlining the activities conducted, the Spanish authorities and organizations contacted by the NCIS or AFOSI, as well as the status of any ongoing investigations and, when appropriate, the estimated date for conclusion.

- In case of conflict, the Spanish Section of the Permanent Committee, after any consultations it deems necessary, will resolve any issue that could arise from the application of these Rules with the required urgency.

- This MOU will have effect from 2007, for a one year period, and will be extended automatically, unless one of the Parties communicates its intention to review or modify any of its items.

-- SPANISH DRAFT MOU (original Spanish) --

El articulo 17.6 del Convenio de Cooperacion para la Defensa entre el Reino de Espana y los Estados Unidos de America de 1 de diciembre de 1988, revisado por el protocolo de enmienda de 10 de abril de 2002, contempla que el U.S. Naval Criminal Investigative Service (NCIS) y la U.S. Air Force Office of Special Investigations (AFOSI) podran mantener personal en Espana para actuar en conjuncion con sus homologos de los Cuerpos y Fuerzas de Seguridad del Estado y de los Servicios de Inteligencia espanoles en asuntos de interes mutuo y llevar a cabo investigaciones criminales que afecten a personal o bienes de los EEUU. Asi mismo establece que las Autoridades competentes de ambos paises deberan establecer las normas para dichas actuaciones.

Por ello, ambas partes acuerdan las siguientes Normas Reguladoras:

MEMORANDUM DE ENTENDIMIENTO PARA REGULAR LA ACTUACION EN ESPANA DEL U.S. NAVAL CRIMINAL INVESTIGATIVE SERVICE (NCIS) Y DE LA U.S. AIR FORCE OFFICE OF SPECIAL INVESTIGATIONS (AFOSI) DE LOS ESTADOS UNIDOS DE AMERICA.

En cumplimiento del articulo 17.6 del Convenio de Cooperacion para la Defensa entre el Reino de Espana y los Estados Unidos de America, el NCIS y la AFOSI actuaran en Espana siguiendo las siguientes Normas:

- La Seccion Norteamericana del Comité Permanente (PCUSS) propondra a la Seccion Espanola (PCSPS), con una anticipacion de al menos 7 dias habiles, la acreditacion del personal del NCIS y de la AFOSI que, tanto con caracter permanente como temporal, actuen o vayan a actuar en Espana. Este personal no podra realizar actividades sin el documento correspondiente de acreditacion que le proporcione la PCSPS.

- Durante sus actuaciones en territorio espanol, el personal del NCIS y de la AFOSI deberan previamente presentar esta acreditacion a la Autoridad espanola con la que actue en conjuncion o a sus agentes.

- Las actuaciones en territorio espanol del personal del NCIS y de la AFOSI se llevaran a cabo en compania de agentes espanoles, a menos que la Autoridad espanola competente renuncie expresamente a este derecho. La PCSPS realizara el control del personal del NCIS y de la AFOSI y gestionara su coordinacion con las Autoridades, Organismos y Registros Publicos espanoles, a traves de los correspondientes puntos de contacto. Podra asimismo realizar gestiones para la obtencion de datos de las mencionadas entidades a peticion de la PCUSS.

- Con caracter previo a una actuacion concreta, el personal del NCIS y de la AFOSI solicitara autorizacion, a traves de la Seccion Norteamericana, a la Seccion Espanola del Comité Permanente, quien comunicara la decision que se adopte. La actuacion debe cenirse a la autorizacion recibida.

- Para realizar las investigaciones criminales previstas en

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el Convenio, que se desarrollarn en conjuncion con las Fuerzas y Cuerpos de Seguridad del Estado, el personal del NCIS y de la AFOSI debera realizar la correspondiente solicitud a la Seccion Espanola, a traves de la Seccion Norteamericana, indicando la naturaleza de los hechos que pretendan esclarecer, las personas implicadas y los lugares de posible actuacion.

- Si a raíz de las citadas investigaciones criminales se constataran indicios de la comisión de algún delito, las autoridades españolas que estén actuando conjuntamente con el personal del NCIS y de la AFOSI pondrán los hechos en conocimiento de la Autoridad Judicial. Igualmente, los investigadores norteamericanos darán cuenta a la PCSPS a través de la PCUSS esperando instrucciones para continuar con sus investigaciones. De acuerdo con el artículo 39 del Convenio de Cooperación para la Defensa, se podrá iniciar en procedimiento de renuncia de jurisdicción.

- Trimestralmente, y en todas ocasiones que se solicite, la PCUSS remitirá a la PCSPS un informe de las diligencias practicadas, autoridades y organismos españoles con quien hayan contactado el NCIS o la AFOSI, el estado de las investigaciones que se estén realizando y, en su caso, el tiempo estimado para su conclusión.

- En caso de conflicto corresponderá a la PCSPS, tras las consultas que estime necesarias, resolver con la urgencia necesaria cualquier problema que pudiera plantearse en relación con el cumplimiento de estas Normas.

- Este MOU entrará en vigor el de de 2007, durante un periodo de un año, prorrogándose automáticamente salvo que se comunique por una de las Partes la intención de revisar o modificar alguno de sus puntos.

End Text.
Aguirre